UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK HOFFMAN, on his own behalf and on behalf of other similarly situated persons, Plaintiff, vs. ONE TECHNOLOGIES, LLC Defendant.	Case No. 2:16-cv-01006-RSL Judge Lasnik DEFENDANT ONE TECHNOLOGIES' ANSWER AND AFFIRMATIVE DEFENSES

ONE TECHNOLOGIES' ANSWER AND AFFIRMATIVE DEFENSES

Defendant One Technologies, LLC, hereby answers plaintiff Mark Hoffman's amended complaint as follows, and denies all allegations unless expressly admitted below.

Paragraph 1: This is a class action brought on behalf of Washington residents who were sent deceptive emails and directed to websites that made deceptive solicitations, requests, and inducements in violation of Washington's Commercial Electronic Mail Act ("CEMA"), RCW 19.190.010, *et seq*., and Consumer Protection Act ("CPA"), RCW 19.86.010, *et seq*.

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Answer: Denies, except that One Technologies admits only that plaintiff seeks to maintain an individual action for alleged violations of Washington law, and seeks certification of the class defined in the complaint. One Technologies denies that it violated Washington law or that plaintiff or any putative class member is entitled to any relief by reason of the allegations in plaintiff's complaint, and denies that the proposed class can or should be certified.

Paragraph 2: Plaintiff is an individual and consumer who resides and works in Washington.

Answer: One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

Paragraph 3: Plaintiff brings this action in his individual capacity and on behalf of a class of persons similarly situated.

Answer: Denies, except that One Technologies admits only that plaintiff seeks to maintain an individual action for alleged violations of Washington law, and seeks certification of the class defined in the complaint. One Technologies denies that it violated Washington law or that plaintiff or any putative class member is entitled to any relief by reason of the allegations in plaintiff's complaint, and denies that the proposed class can or should be certified.

Paragraph 4: ONE TECHNOLOGIES is a company which markets and provides credit monitoring services to consumers throughout Washington.

Answer: Admits. One Technologies also markets and provides credit monitoring services to consumers in other states, and does not target consumers in Washington any more than it targets consumers in other states.

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Paragraphs 5: ONE TECHNOLOGIES is also known as One Technologies, LLC or is an alter ego of One Technologies, LLC.

Answer: Denies.

Paragraph 6: ONE TECHNOLOGIES regularly transacts business in King County, Washington.

Answer: Denies.

Paragraph 7: The wrongful acts referenced in this complaint occurred, were initiated, were furthered, were given assistance in, or were directed to persons in King County, Washington.

Answer: Denies.

Paragraph 8: HOFFMAN and class members have received similarly deceptive and misleading emails from ONE TECHNOLOGIES or its agents and/or have been directed to deceptive or misleading websites with solicitations, requests or inducements that violate the CEMA and CPA.

Answer: Denies.

Paragraph 9: Within four years from the filing of the original complaint in this matter, HOFFMAN has received numerous emails with false or misleading information in their subject lines from ONE TECHNOLOGIES or its agents and/or was deceptively solicited, requested, or induced by ONE TECHNOLOGIES or its agents to provide personally identifying information by means of web pages, electronic mail messages or other use of the internet in violation of CEMA and the CPA.

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Answer: Denies.

Paragraph 10: In a number of the emails sent to HOFFMAN and class members, the subject lines contained false, misleading, or otherwise deceptive information.

Answer: Denies.

Paragraph 11: Some of deceptive subject lines were the following:

a. "Experian CyberAlert Examine your score today at no charge -7093501";

b. "Data Breach: Check Your Equifax Score for Errors, Free*Today";

c. "Due to DataHacks Check Your TranUnion Score for Errors, Free*Check 4-20-15";

d. "2nd Notice: Check Out Your 3 Bureau Ranking for Irregularities, by Monday, April 13, 2015. Deadline"; and

e. "Your Monthly Notification Experian Score is Now Viewable".

Answer: Denies, except that One Technologies admits only that it hosts one or more websites that allow consumers to voluntarily enroll in credit monitoring and related services.

Paragraph 12: In order to solicit, request, or otherwise induce HOFFMAN and class members to provide personally identifying information, many emails sent by ONE TECHNOLOGIES or its agents had deceptive email addresses identifying the sender such as the following

a. "TransUnion DataLeak Warning <TransUnion-DataLeak-Warning@value10.cozyrecordscore.us>";

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b. “Equifax Cyber Warning <equifax.cyber.warning@blw222.interiorscore.ninja>"; and

c. “Your_Experian_Report <your-experian-report@blink70.freecreditscoreshall.ninja>"; and

d. Your Score Check <YourScoreCheck@dorcasmixo.com>.

Answer: Denies.

Paragraph 13: The email addresses identifying the emails’ sender were not valid email addresses which could receive a reply email.

Answer: Denies.

Paragraph 14: Many emails contained deceptive messages with embedded links to websites such as the following:

a. “Due to DataHacks, Check Your TransUnion Score for Errors Free*Check 4-20-15” with an embedded link to http://knowmore.scorelocated.us/;

b. “Equifax CyberCrime Warning- Complimentary Score Check ends 04.23.15 Go Here to View Your Score” with an embedded link to http://inquire.anlgs.ninja/; and

c. “Experian CyberAlert: Examine your score today at no charge Go here to See Your Score” with an embedded link to http://choose.ladof.ninja/.

Answer: Denies.

Paragraph 15: All emails solicited, requested, or otherwise induced recipients to visit websites of ONE TECHNOLOGIES or its agents.

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Answer: Denies.

Paragraph 16: ONE TECHNOLOGIES or its agents employed automated email creation and transmission programs which introduced slight variations among the subject lines, sender addresses, and contents of each email in order to defeat email spam filters.

Answer: Denies.

Paragraph 17: ONE TECHNOLOGIES or its agents kept each website linked in an email active for only a brief period after transmitting the email. This helped ONE TECHNOLOGIES and its agents to obscure the origins of the emails sent to recipients of the emails.

Answer: Denies.

Paragraph 18: When HOFFMAN or a class member visited linked websites that were active, they would be re-directed to websites which were owned and operated by ONE TECHNOLOGIES and/or its agents.

Answer: Denies.

Paragraph 19: At these websites, ONE TECHNOLOGIES and/or its agents deceptively attempted to induce HOFFMAN and class members to believe incorrectly that the contents of the website and the emails which directed them to the websites were provided with authority or approval of TransUnion, Experian, and Equifax.

Answer: One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies them.

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Paragraph 20: With these emails and websites, ONE TECHNOLOGIES engaged in a scheme which attempted to induce, request, and solicit HOFFMAN and other class members to provide personal identifying information through credit monitoring service subscriptions by deceptively representing that HOFFMAN and other class members would be doing business with TransUnion, Experian, Equifax, or their authorized representatives or else that they were receiving important notifications or inducements from TransUnion, Experian, and Equifax encouraging or directing them to do business with ONE TECHNOLOGIES or its agents.

Answer: Denies.

Paragraph 21: ONE TECHNOLOGIES actually or ostensibly authorized or directed its agents to engage in the conduct attributed to agents in this complete. Alternatively, or additionally, ONE TECHNOLOGIES ratified such conduct. For example, ONE TECHNOLOGIES paid its agents a sum of money or other consideration for each person who provided personal identifying information and subscribed to credit monitoring services at the deceptive websites owned or operated by ONE TECHNOLOGIES or its agents. Alternatively, if the persons referenced in this complaint as agents of ONE TECHNOLOGIES are not its agents, then they are its alter egos.

Answer: Denies.

Paragraph 22: The deceptive business practices and conduct of ONE TECHNOLOGIES and its agents referenced in this complaint injured HOFFMAN and class members in their trade and property.

Answer: Denies.

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Paragraph 23: ONE TECHNOLOGIES or its agents knowingly and willfully violated the CPA and CEMA in ways that have injured and damaged HOFFMAN and other class members. The injuries and damages incurred by HOFFMAN are typical of injuries and damages incurred by other class members. Such injuries and damages include, but are not limited to, the following:

a. Emails received by Plaintiff injured the quiet use and enjoyment of his email server;
b. Emails received by Plaintiff injured his quiet use and enjoyment of the computer he uses for his trade;
c. Emails received by Plaintiff injured his quiet use and enjoyment of his backup storage devices;
d. Emails received by Plaintiff usurped some of the limited storage space on his email server;
e. Emails received by Plaintiff usurped some of the limited storage space on the computer he uses for his trade;
f. Emails received by Plaintiff usurped some of the limited storage space on his backup storage devices;
g. Emails received by Plaintiff caused him to lose time from his trade and compensable work;
h. Emails received by Plaintiff caused him to visit web pages where his personally identifying information was solicited by Defendant or its agents who seemed to represent themselves, directly or by implication, to be other persons (e.g., TransUnion, Experian, and Equifax) without the authority or approval of such other persons;

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i. The web pages to which the received emails directed Plaintiff injured his quiet use and enjoyment of the computer he uses for his trade;

j. The web pages to which the received emails directed Plaintiff usurped some of the limited storage space on the computer he uses for his trade;

k. Emails received by Plaintiff were annoying and annoyed Plaintiff;

l. Emails received by Plaintiff were aggravating and aggravated Plaintiff;

m. Emails received by Plaintiff worried him and caused him anxiety about his credit;

n. Email received by Plaintiff invaded his privacy;

o. The web pages to which the received emails directed Plaintiff injured his trade and property;

p. Emails received by Plaintiff caused him to accrue a right to recover damages provided statute (e.g., RCW 19.190.010, et seq.) that Defendant refuses to pay; and

q. The web pages to which the received emails directed Plaintiff caused him to accrue a right to recover damages provided statute (e.g., RCW 19.190.010, et seq.) that Defendant refuses to pay.

Answer: Denies.

Paragraph 24: The emails received by Plaintiff and other class members and the web pages to which these emails directed them injured them in their trade and property.

Answer: Denies.

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Paragraph 25: These violations continue and will continue unless ONE TECHNOLOGIES and its agents are compelled to cease and desist said illegal and deceptive business practices and conduct. For example, Plaintiff received emails that are a subject of this complaint after Defendant was served with a summons for this action and appeared in this action.

Answer: Denies, except that One Technologies admits only that plaintiff seeks to maintain an individual action for alleged violations of Washington law, and seeks certification of the class defined in the complaint. One Technologies denies that it violated Washington law or that plaintiff or any putative class member is entitled to any relief by reason of the allegations in plaintiff's complaint, and denies that the proposed class can or should be certified.

Paragraph 26: Plaintiff brings this class action pursuant to Civil Rule 23 on behalf of himself and as a representative of the following class of persons (the "Class"):

> Washington residents who received emails from ONE TECHNOLOGIES or its agents that encouraged, induced, solicited, requested, or otherwise directed recipients to visit a web page owned or operated by ONE TECHNOLOGIES or its agents and that web page prominently displayed a logo for TransUnion, Experian, or Equifax.

Answer: Denies.

Paragraph 27: The Class excludes all attorneys of record and any judges who preside in any hearing in this action.

Answer: Denies, except that One Technologies admits only that plaintiff seeks to maintain an individual action and seeks certification of the class defined in the complaint. One Technologies denies that the proposed class can or should be certified.

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Paragraph 28: The claims of the Class satisfy all of the requirements for class certification pursuant to Civil Rule 23 including numerosity, commonality, typicality, adequacy of representation, manageability, and superiority.

Answer: Denies.

Paragraph 29: The Class includes numerous Washington residents. Joinder of the numerous members of the Class is impracticable. In fact, given the number of Class members, the only way to deliver substantial justice to all Class members is by means of a single class action.

Answer: Denies.

Paragraph 30: There are questions of fact and law common to all Class members. These common questions predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from the conduct of ONE TECHNOLOGIES include, without limitation, the following:

a. Is there a cause of action under the CPA arising from emails sent in violation of CEMA or else web pages to which emails induced or solicited recipients to visit?

b. Is there a cause of action under CEMA arising from emails sent in violation of CEMA or else web pages to which emails induced or solicited recipients to visit?

c. Do the business practices and conduct of ONE TECHNOLOGIES that are the subject of this complaint otherwise violate the CPA or CEMA?

d. Did ONE TECHNOLOGIES or its agents negligently, knowingly, or willfully violate Washington law with its business practices and conduct?

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e. Is ONE TECHNOLOGIES liable for the business practices and conduct of its agents that violate the CPA or CEMA?

f. Is the Class entitled to injunctive relief to prevent ONE TECHNOLOGIES from continuing with its unlawful behavior?

Answer: Denies.

Paragraph 31: The questions referenced above, and other questions like them, predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of claims of all Class members.

Answer: Denies.

Paragraph 32: Plaintiff's claims are typical of those of the other Class members.

Answer: Denies.

Paragraph 33: A class action is the appropriate method for the fair and efficient adjudication of this controversy. ONE TECHNOLOGIES has acted in a general manner as part of a systemic process to the injury and damage of the Class. ONE TECHNOLOGIES or its agents continue this same conduct which puts other Class members at undue risk of injury in the future. The prosecution of separate actions by individual Class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for ONE TECHNOLOGIES, or substantially impair or impede the ability of Class members to protect their interests. ONE TECHNOLOGIES has acted in a manner that applies generally to the class so that final injunctive or corresponding declaratory relief is appropriate. Alternatively the questions of

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law and fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

Answer: Denies, except One Technologies lacks knowledge or information sufficient to form a belief about the truth of the allegation in that "Plaintiff is represented by counsel with significant experience representing clients in complex class action litigation" and therefore denies that allegation.

Paragraph 34: Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the Class whose interests will be fairly and adequately protected by Plaintiff. Also, Plaintiff is represented by counsel with significant experience representing clients in complex class action litigation.

Answer: Denies.

Paragraph 35: Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impractical and undesirable for each of the numerous persons who comprise the Class to bring separate actions. The maintenance of such separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

Answer: Denies.

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AFFIRMATIVE DEFENSES

One Technologies asserts the following defenses, each as separate and distinct defenses to plaintiff's alleged cause of action. Insofar as any of the following expresses denial of an element of any claim alleged against One Technologies, such expression does not indicate that Plaintiff is relieved of its burden to prove each and every element of any such claims or that One Technologies has assumed any burden of proof:

1. Some or all of plaintiff's claims and those of putative class members are preempted by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §§ 7701 *et seq*. because the emails do not contain material falsity or deception.

2. Plaintiff, or some or all of the putative class members, consented to receive the emails over which they sue.

3. Plaintiff, or some or all of the putative class members, lack standing inasmuch as they suffered no actual injuries. Alternatively, or in addition, plaintiff or some of the putative class members caused their own injuries (or suffered no injuries) to the degree they voluntarily visited websites over which they complain and voluntarily interacted with those sites to either enroll in services provided by One Technologies, or for certain purposes other than enrolling themselves in services provided by One Technologies. For example, plaintiff voluntarily visited and voluntarily interacted with at least One Technologies website to provide contact information for someone other than himself (Alphonse La Rue) and thus lacks standing to complain over the websites in that he had no *bona fide* reason for visiting any One Technologies website for such purpose. And, regardless, One Technologies actually provides the credit monitoring services it advertises.

4. Plaintiff, or some or all of the putative class members, have unclean hands. For example, plaintiff voluntarily visited and voluntarily interacted with at least One Technologies

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websites to provide contact information for someone other than himself (Alphonse La Rue). Equity requires barring plaintiff's claims in such circumstances especially if discovery reveals that plaintiff undertook these actions for any nefarious purpose, or engaged in any other conduct that would require denying him relief in equity.

5. Plaintiff's claims, and those of putative class members, are barred because Washington's anti-spam statute is unconstitutional to the extent it is applied in a manner that violates any constitutional protection, including without limitation, the due process clause of the Fourteenth Amendment to the United States Constitution, the excessive fines clause of the Eighth Amendment to the United States Constitution, and the constitutional right of free speech.

6. Plaintiff's claims, and those of putative class members, are barred because such damages resulted from third party actions for which One Technologies is not responsible. One Technologies should not be held vicariously liable for any offending emails it received from a third party marketer. Marketers are not employees of One Technologies and One Technologies does not control marketers.

7. Plaintiff's claims are barred in whole or in part, or its recoverable damages should be reduced, because it failed to take reasonable steps to minimize damages.

Defendant reserves its right to amend its affirmative defenses as discovery progresses.

WHEREFORE, defendant One Technologies prays for judgment on the complaint as follows:

1. That judgment be entered in favor of defendant One Technologies, LLC;
2. That plaintiff and all putative class members take nothing by virtue of his complaint against One Technologies;
3. That the Court deny certification of the proposed class in plaintiff's complaint;

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4. That One Technologies be awarded its costs of suit incurred in defense of this action; and

5. For such other and further relief as the Court deems just and proper.

Date: February 24, 2017

Respectfully submitted,

By: /s/ Ari N. Rothman

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury that on the 24th February, 2017, this document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing by email to the following:

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SIGNED in Seattle, Washington, this 24th day of February 2017

/s/ Craig S. Sternberg

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